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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 294

LOUISIANA, *ex rel.* JACK P. F. GREMILLION,
Attorney General,
Appellant,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Appellees.

WADE O. MARTIN, JR., Secretary of State, etc., *et al.*,
Appellants,

vs.

NEW ORLEANS BRANCH, OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR APPELLEES

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INDEX

	PAGE
Statement	1
Summary of Argument	5
Argument	7
Conclusion	14

Table of Cases

Adler v. Board of Education, 342 U. S. 485	14
American Communications Association v. Douds, 339 U. S. 382	8, 12
Barenblatt v. United States, 360 U. S. 109	6, 10
Bates v. Little Rock, 361 U. S. 516	7, 10, 12
Bryant v. Zimmerman, 278 U. S. 63	6, 8, 9
Cantwell v. Connecticut, 310 U. S. 296	6, 12
DeJonge v. Oregon, 299 U. S. 353	14
Garner v. Board of Public Works, 341 U. S. 716	14
Gerende v. Board of Supervisors, 341 U. S. 56	14
Knights of the KKK Inc. v. Strayer, 26 F. 2d 727 (W. D. Pa., 1928)	6, 9
Lassiter v. Northampton County Bd. of Elections, 360 U. S. 453	7, 13
NAACP v. Alabama, 357 U. S. 449	3, 7, 10
Saia v. New York, 334 U. S. 558	6, 12
Shelton v. Tucker, 364 U. S. 479	6, 12, 13
Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372 (N. D. Ala. 1958), aff'd, 358 U. S. 101	7, 13
Watkins v. United States, 354 U. S. 178	12
Wieman v. Updegraff, 344 U. S. 183	14
Yick Wo v. Hopkins, 118 U. S. 536	7, 13

Other Authorities

	PAGE
"Assault on Freedom of Association," *American Jewish Congress* (1957)	11
Bohn, "The Ku Klux Klan," 30 *Am. J. Soc.* 385 (1925)	9
Dykeman & Stokely, "McCarthyism Under the Magnolias," *The Progressive* (July 1959)	11
Franklin, "From Slavery to Freedom" 471-474 (1948)	9
Hearings on the Ku Klux Klan before the House Committee on Rules, 67 Cong. 1st Sess. (1921)	6, 8
"Intimidation, Reprisals and Violence," *American Friends Service Committee, et al.* (1959)	11
Myers, "History of Bigotry in the United States" 270-271 (1944)	8
Robison, "Protection of Associations from Compulsory Disclosure of Membership," 58 *Col. L. Rev.* 614 (1958)	11
S. Rep. No. 41, Pts. 1-13, 42nd Cong. 2nd Sess. (1872)	6, 8
Tannenbaum, "The Darker Phases of the South" (1924)	9
White, "The Rope and the Faggot" (1929)	9

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR APPELLEES

Statement

On March 1, 1956, the State of Louisiana, through its Attorney General, Fred S. LeBlanc, commenced proceedings in the 19th Judicial District Court for the Parish of East Baton Rouge against appellees, the National Asso-

ciation for the Advancement of Colored People and some of its officials and members in Louisiana, for failure to comply with the provisions of LRS 12:401-409. The relief sought was an injunction barring all activities of the appellee organization and dissolution of all of its subdivisions and affiliates in the State of Louisiana (R. 1-8).

On March 28, 1956, the National Association for the Advancement of Colored People, on behalf of itself and its officers and members named as parties in the aforesaid proceedings, filed a petition for removal to the United States District Court for the Eastern District of Louisiana under the provisions of Title 28, United States Code, Section 1443(2). Despite the fact that the requirements of Title 28, United States Code, Section 1446(d) and (e) in respect to notice and bond were properly met (R. 10-14), and without regard to the clear prohibitive language of Title 28, United States Code, Section 1446(e), the 19th Judicial District Court for the Parish of East Baton Rouge proceeded on March 29, 1956, to a hearing on the state's complaint. After hearing, the state court issued an injunction against the continued or further operation of the appellee organization and any of its affiliates until the requirements of LRS 12:401-409 had been met.

Appellees, thereupon, applied to the federal court, to which the cause had been removed, for an injunction to stay further action in the state courts until federal jurisdiction had been determined in the removal proceedings. After hearing on April 4, 1956, the court below concluded that it could not properly dissolve what the state court had done subsequent to removal; advised appellees to seek relief in the state courts, including application here if necessary; and decided to defer further action in the removal proceedings until appellees had secured a determination on appeal of the propriety of the state court's disregard of Title 28, United States Code, Section 1446(e).

On November 26, 1956, the Louisiana Court of Appeals, for the First Circuit ruled (90 So. 2d 884) that the matter was properly before the federal court on removal, that all the action taken in the state court subsequent to removal was a nullity, and upon that basis dismissed the appeal.

Because of the ever present threat of prosecution under LRS 12:404, several of the subdivisions of the appellee-organization in order to function undertook to file a list of their members with the Secretary of State (R. 151), and affiliates which did not do so did not operate. On June 30, 1958, *N.A.A.C.P. v. Alabama*, 357 U. S. 449, was decided by this Court. Thereafter, none of appellee's affiliates undertook to disclose the names of their members to the Secretary of State.

After decision by the Louisiana Court of Appeals, hereinabove referred to, state officials made no effort in the federal courts to remand to the state courts the cause which appellees had removed, and appellees took no action in the federal courts to obtain a determination as to the propriety of the attempted removal under Title 28, United States Code, Section 1443. The matter was merely left pending on the docket of the federal court.

In 1958 the State of Louisiana enacted LRS 385-388, which requires all of the Louisiana subdivisions and affiliates of the appellee organization to file annually with the Secretary of State an affidavit, attesting that none of the officers of the appellee corporation belong to any organization cited by the House Un-American Activities Committee or by the Attorney General of the United States as a Communist, Communist-front or subversive organization.

On November 24, 1958, appellees, the New York corporation, its New Orleans affiliate and the officers thereof, filed suit against the Secretary of State, the Attorney General and the District Attorney of Orleans Parish attacking the constitutionality of both LRS 14:385-388 and

LRS 12:401-409 at the grounds the enforcement of these statutes would deprive the organization and its members of federally-protected rights of freedom of speech and association, due process and equal protection of the laws and access to the courts—all in violation of Fourteenth Amendment guarantees. An injunction was sought to prevent the enforcement of LRS 12:401-409, insofar as it would require the disclosure of the names and addresses of any member of the NAACP, and of LRS 14:385-388, insofar as it would require the submission of an affidavit by any NAACP affiliate in Louisiana, and to prevent enforcement of any penalties against appellees' members, officers or contributors for failure to disclose the names of the members of the NAACP or to submit the affidavit required (R. 15-24).

On December 22, 1958, appellants filed their answer in the court below (R. 32-35). On October 9, 1959, while this action was pending, the Attorney General secured a temporary restraining order and injunction in the First Judicial District Court for the Parish of Cado barring all NAACP activities in the state for failure to comply with the provisions of LRS 12:401-409 and LRS 14:385-388 (R. 42-55).

On October 21, 1959, appellees filed a motion for a temporary restraining order and preliminary injunction in the court below seeking to have appellants barred from proceeding further in the state courts (R. 36-41). On October 30, 1959, the cause which appellees had instituted challenging the constitutional validity of LRS 12:401-409 and LRS 14:385-388 and the action removed the court below were consolidated and set down for hearing, with all the evidentiary matter therein to be submitted by affidavit or in other documentary form (R. 58).

In November, 1959, the matter came on for hearing before a statutory United States District Court. The evidence is uncontroverted that between the years 1955 and 1959, the

NAACP had suffered a frightening erosion. There has been a vast reduction in memberships and a great decline in the number of functioning NAACP affiliates as well, accompanied by a severe loss in revenue (R. 58-67, 117-119). Appellees attributed these losses to the anti-NAACP climate in Louisiana and to the fear of prospective NAACP members and contributors of public disclosure of their NAACP connection with resultant economic and physical reprisals and harassment (R. 59-66, 105, 117-120, 125-127), and in support thereof, affidavits and exhibits attesting to specific incidents of intimidation were filed (R. 103-104, 106-108, 109, 116, 121-125, 136-141).

The evidence disclosed that in 1950 and 1951, no organization and in 1952, 1953, 1954 and 1955, only a few organizations filed lists of their members with the Secretary of State. Approximately 1,000 such lists were filed in 1956; 2,000 in 1957; 1,000 in 1958 and 500 in 1959 (R. 130). A total of 12 NAACP affiliates filed lists of members with the Secretary of State in 1957, and the three units which filed lists in both 1956 and 1957 reported more members on the latter occasion (R. 151).

Appellants were unable to give any concrete information concerning the number or the names of the organizations against which action had been brought for failure to comply with LRS 14:385-388 and LRS 12:401-409 (R. 129), despite a specific request by the court below that such information be furnished (R. 58).

Summary of Argument

LRS 12:401-409 was enacted in 1924 to unmask and to curb the lawless activities of the Ku Klux Klan. After the Klan menace had faded, the statute became a virtual dead letter, unheeded and unenforced by state authorities. In 1956, however, the statute was resurrected, and failure to comply with its terms was used as the basis for court pro-

ceedings seeking a ban on all NAACP activity and dissolution of all NAACP units in Louisiana. Whatever the reasonableness of a requirement that the identity of members of organizations be made public, where their members are oath bound, operate in secret, commit acts of lawlessness, foment racial and religious intolerancy and generally subvert civil authority (see, S. Rep. No. 41, parts 1-13, 42nd Cong. 2d Sess. (1872); *Hearings on the Ku Klux Klan before the House Committee on Rules*, 67th Cong. 1st Sess. (1921); *Bryant* v. *Zimmerman*, 278 U. S. 63; *Knights of the KKK, Inc.* v. *Stranger*, 26 F. 2d 727 (W. D. Pa. 1928)), an attempt to enforce such a requirement against a wholly different kind of organization and under totally disparate circumstances raises constitutional questions of serious proportions. *Cf. Barenblatt* v. *United States*, 360 U. S. 109.

The effect of enforcement here is to deter the exercise of rights of freedom of association of members of appellee organization. Appellees' members are not oath bound; they do not operate in secret, commit acts of lawlessness, foment religious intolerance or seek to subvert civil authority. While appellees' aims and purposes are at variance with those of state officials in respect to the validity and merits of racial segregation, there is no evidence of any effort to effectuate these views by other than lawful means. The choice here is not between permitting the strengthening of organizations that might seek in the future to accomplish lawlessness and deterring exercise of rights of freedom of association in respect to lawful, albeit dissident and unpopular activity, as appellants seem to suggest. There are clearly other alternatives open to the state less restrictive upon the exercise of freedom of association than that which the state seeks here. See *Bryant* v. *Zimmerman*, *supra*. As such, LRS 12:401-409 is clearly invalid and must fall. *Shelton* v. *Tucker*, 364 U. S. 479; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Saia* v. *New York*, 334 U. S. 558.

Moreover, apart from the statute's invalidity on the grounds aforesaid, the evidence is clear that appellees have been denied equal protection of the laws by virtue of unjust and illegal discrimination in the administration and enforcement of the statute by appellants. See *York* Bd. v. *Hopkins*, 118 U. S. 536; cf. *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45, 53; *Shuttlesworth* v. *Birmingham Board of Education*, 162 F. Supp. 372 (N. D. Ala. 1958), aff'd, 358 U. S. 101.

Only a word need be said about LRS 14:385-388. It seems to be clearly in violation of basic due process requirements in that it seeks to punish in the absence of personal knowledge and for the activities of others over whom those subject to penalty have no control.

Since both statutes restrict exercise of rights of freedom of association, their application to require the disclosure of appellees' members can validly take place only upon a showing that the state interest in the publication of the membership list here in question is compelling. *Bates* v. *Little Rock*, 361 U. S. 516; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449. Having failed to demonstrate this, the state has no sound basis upon which to contest the judgment below. Appellees respectfully submit, therefore, that the judgment below should be affirmed.

ARGUMENT

LRS 12:401-409, insofar as it requires the public disclosure of appellees' members, and LRS 14:385-388, insofar as it requires the submission of an affidavit by local affiliates respecting the activities of the officers of the New York corporation, are unconstitutional and void.

LRS 12:401-409 was enacted in 1924 aimed at the Ku Klux Klan. (See Appellants' brief, p. 15 and Appendix B thereto at p. 50, *et seq.*) The statute is not limited to oath

bound or secret organizations (*cf.* the New York statute in *Bryant v. Zimmerman*, 278 U. S. 63) but requires all organizations, with the exception of churches and the National Guard, to file annually a list of their members with the Secretary of State. Despite its broad sweep, apparently the statute was never uniformly enforced, and after the menace of the Klan had passed, it fell into disuse (R. 136). In 1956, however, it was resurrected as a means of curbing the activities of the appellee organization. Aside from proceedings commenced against this organization, there is no record of the state seeking to secure compliance with the statute (R. 59, 129).

Obviously, constitutional guarantees of freedom of speech and association do not strip the state of power to prevent lawlessness, violations of the rights of others or subversion of civil authorities. See *American Communications Association v. Douds*, 339 U. S. 382. And it was on this basis that enforced public disclosure of members of the Ku Klux Klan was upheld in *Bryant v. Zimmerman*, *supra*.

Both LRS 12:401-409 and the New York statute under review here in *Bryant v. Zimmerman* were enacted to deal with a specific evil which had plagued state and federal authorities for some time. The Ku Klux Klan was first organized in Tennessee in 1866 and spread rapidly through the South. The organization operated in secret, sought to prevent Negroes from exercising their newly granted constitutional rights by violence and other forms of intimidation, and its aim was to wrest political control of the South from the North and the Republican Party. Congressional investigation revealed that the organization lived on terror, committed acts of physical violence, including lynchings and murder as punishment for infractions of its code of appropriate personal or moral conduct. See, S. Rep. No. 41, pts. 1-13, 42nd Cong. 2d Sess. (1872); Myers, "History of Bigotry in the United States" 270-271 (1944). The Klan was suppressed by federal military authority.

After World War I, there was a resurgence of the Ku Klux Klan. The modern Klan was first organized in 1915 modelled in spirit and practice after the old Klan. In addition to being anti-Negro, the new Klan was both anti-Semitic and anti-Catholic and, therefore, stirred up religions as well as racial prejudice, fomented disorder and encouraged riots and unlawful assembly resulting in breaches of the peace, defiance of the law, bloodshed and loss of life. See *Hearings on the Ku Klux Klan before the House Committee on Rules*, 67th Cong. 1st Sess. (1921); *Knights of the KKK, Inc. v. Strayer*, 26 F. 2d 727 (W. D. Pa. 1928); Bohn, "The Ku Klux Klan Interpreted," 30 *Am. J. Soc.* 385 (1925); Myers, *op. cit. supra* Chaps. 24, 25 and 26; Franklin, "From Slavery to Freedom" 471-474 (1948); White, "The Rope and the Faggot" (1929); Tannenbaum, "The Darker Phases of the South" (1924).

In *Bryant v. Zimmerman*, *supra* at page 72, this Court approved the enforced public identification of members of oath bound organizations on the ground that the state could "apply to associations having an oath-bound membership any reasonable regulation calculated to confine their purposes and activities within limits which are consistent with the rights of others and the public welfare." The Court reasoned that the disclosure required might operate as an "effective or substantial deterrent" to the commission of violations of public and private right which the association might be tempted to engage in otherwise; and it was assumed that in the enacting of the statute, the New York legislature had before it the facts in relation to the Klan which had been brought to light in the hearings before the House Committee on Rules, referred to above.

2. Appellee organization, however, does not operate in secret. Its members are not bound by secret oaths. It has no aims or purposes at war with those embodied in the fundamental law. It seeks to secure equal citizenship rights for all persons without regard to their race or color. And

although this is a dissident view to which many persons stand opposed in principle or practice, appellee and its members have not sought to achieve their aims by resort to violence or lawlessness. The disclosure here sought, therefore, raises quite different constitutional questions than those present when public identification is used to curb or contain lawless activities. See *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449.

It seems clear, therefore, that in upholding the removal of secrecy surrounding the identity of members of an organization whose members are bound by secret oath and committed to lawless acts in furtherance of group aims, this Court is not forced by inexorable logic to the necessity of sustaining the public disclosure of the members of all organizations without regard to their purposes, aims or activities, the public needs which the disclosure serves or its effect on the exercise of freedom of association in respect to legitimate activity. Cf. *Barenblatt* v. *United States*, 360 U. S. 109.

The state argues for the validity of LRS 12:401-409 as a proper exercise of state power to prevent future evil. In *N.A.A.C.P.* v. *Alabama, supra;* and *Bates* v. *Little Rock*, 361 U. S. 516, this Court found that public disclosure of the identity of NAACP members in Alabama and Arkansas constituted a real and effective deterrent to the exercise of rights of freedom of association secured against state interference under the due process clause of the Fourteenth Amendment.

Here, similarly, evidence has been introduced showing that members of the NAACP once publicly identified were subject to intimidation, harassment and reprisals (R. 59-67, 103-127), and that the appellee organization had sustained grave losses in respect to members, affiliates and finances (R. 59-67, 117-119). Unlike *Alabama* and *Bates*, the testimony is not uncontroverted, for the state here seeks to dispute the existence of specific instances of intimidation, harassment or reprisals about which ap-

pellees' witnesses testified. Aside from the unlikelihood, at the present stage in American history, of attitudes on questions of racial equality being substantially different in Louisiana than those in Arkansas or Alabama, the existence of an anti-NAACP climate throughout the South has been publicized so thoroughly, see, *e.g.*, Robison, "Protection of Associations From Compulsory Disclosure of Membership", 58 *Col. L. Rev.* 614 (1958); Assault on Freedom of Association, *American Jewish Congress* (1957); "Intimidation, Reprisals and Violence", *American Friends Service Committee, et al.* (1959); Dykeman and Stokely, "McCarthyism Under the Magnolias", *The Progressive* (July 1959), that the Court, even in the absence of evidentiary data, could take judicial notice of its existence.

Moreover, the crucial issue is not whether the disclosure results in intimidation, reprisals or harassment in fact, but whether the atmosphere is such that there is a rational fear that such pressures might result from the revealment of an associational connection with the NAACP, and as a consequence persons are discouraged from joining or participating in the organization. Indeed, appellees submit that the *ratio decedendi* of the *Alabama* and *Bates* cases is that public identification of members of an organization advocating lawful views, aims and purposes which may be disapproved by the controlling majority is *per se* a deterrent to the exercise of rights of freedom of association. See, *Watkins* v. *United States*, 354 U. S. 178, 198; *American Communications Association* v. *Douds*, *supra* at p. 402. Where such disclosures are sought, as Mr. Justice Stewart stated in *Bates* v. *Little Rock*, *supra*, at 524, decision "must finally turn, therefore, on whether the * * * State [has] demonstrated so cogent an interest in obtaining and making public the membership lists of these organizations as to justify the substantial abridgment of associational freedom which such disclosure will effect. Where there is a significant encroachment on personal liberty, the State must prevail only upon showing a subordinating interest which is compelling."

The need to prevent the recurrence in the future of an evil, akin to that which in 1924 LRS 12:401-409 was enacted to eliminate, cannot supply that compelling justification essential to sustain application of the legislation to these appellees in 1961. Recently in *Shelton* v. *Tucker*, 364 U. S. 479, 488, Mr. Justice Stewart stated what appears to have been a guiding principle in this Court's evaluation of the competing claims of governmental authority to enforce police power regulations as against the individual's right to freedom from restraint. There he said: "[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breath of the legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose". See also, *Cantwell* v. *Connecticut*, 310 U. S. 296; *Saia* v. *New York*, 334 U. S. 558. And though Mr. Justice Stewart was speaking for a divided Court, there is unanimous support for the view that the existence of possible alternative methods by which the state may achieve its ends, having a less restrictive impact upon freedom of association, is at least a "constitutionally relevant consideration" in determining whether the state has encroached too far on the Fourteenth Amendment guarantees of personal liberty. See Mr. Justice Frankfurter, dissenting in *Shelton* v. *Tucker, supra*, at pages 490, 493.

That such alternatives are present here is hardly open to question. Certainly it cannot be said that all organizations pose a potential threat to civil authority. Oath bound organizations, or those that operate in secret, or those with unlawful purposes may, but the harm which such organizations can cause might be met by a requirement that all organizations reveal their aims, purposes and activities, or be required to indicate how they function, or that oath bound organizations and those operating in secret disclose who their members are. In short, the

choice is not between leaving Louisiana incapable of preventing a resurgence of organized lawlessness or depriving appellees' members of guarantees of freedom of association: A more narrowly drawn statute clearly inapplicable to appellees or the administration of the statute so that it affects only those organizations guilty of or condoning lawlessness would accomplish what the state here indicates is its concern without doing violence to fundamental rights of freedom of association.

3. Moreover, the validity of a governmental regulation must be judged in relation to the specific circumstance in which officials seek to apply it. Thus, a statute fair on its face will be struck down if the evidence discloses that it is being utilized to perpetuate a discrimination which the Fourteenth or Fifteenth Amendments were designed to uproot. See *Lassiter v. Northampton County Board of Elections*, 360 U. S. 45, 53; *Yick Wo v. Hopkins*, 118 U. S. 536; *Shuttlesworth v. Board of Education*, 162 F. Supp. 372 (N. D. Ala. 1958), aff'd, 358 U. S. 101. Under this yardstick, where the evidence here discloses that state officials are unable to furnish any evidence concerning the number or names of the defendants prosecuted under a statute which has been a part of the law of the state since 1924, enforcement of LRS 12:401-409 against appellees would appear to constitute a certain denial of equal protection of the laws.

4. LRS 14:385-388, appellees respectfully submit, is obviously unconstitutional. Here local organizations affiliated with out-of-state corporations are required to file annually with the Secretary of State a sworn statement that none of the officers of the out-of-state corporation are members of any organization cited by the Un-American Activities Committee or the Attorney General of the United States as a communist, Communist front or subversive organization. Failure to file the required affidavit makes

the officers and members of the local organization subject to punishment, and the filing of a false affidavit is punishable as perjury.

In the present instance, there are some 18 directors, 20 Vice-Presidents and approximately 10 chief executive officers of the New York corporation. These officials come from all parts of the United States, but only a few of them reside or work in Louisiana. It would obviously be absurd to expect local persons to have sufficient knowledge of the personal background of each of these 78 persons to be able to file the required affidavit. The statute seeks to penalize individuals for what out-of-state persons may have done even in the absence of personal knowledge or unlawful activity on the part of the affiliate or individual which the statute undertakes to control.

Mr. Justice Frankfurter, concurring in part and dissenting in part in *Garner* v. *Board of Public Works*, 341 U. S. 716, 724, 728, could have been speaking as if the instant statute were before the Court. There he said: "* * * [I]t is [not] consonant with the Due Process Clause for men to be asked * * * to swear to something they cannot be expected to know. Such a demand is at war with individual integrity * * *." *Cf. Wieman* v. *Updegraff*, 344 U. S. 183; *DeJonge* v. *Oregon*, 299 U. S. 353; *Gerende* v. *Board of Supervisors*, 341 U. S. 56; *Adler* v. *Board of Education*, 342 U. S. 485. As a matter of fact, faced with such a requirement, prudence would necessitate refusing to file the affidavit, and indeed to reject participation in the organization rather than to be subject to punishment for failure to do the impossible. As such, the statute is patently unreasonable and an unwarranted violation of constitutional guarantees of due process of law.

CONCLUSION

Wherefore, for the reasons hereinabove stated, the judgment below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 294.—October Term, 1960.

Louisiana ex rel. Jack P. F. Gremillion, Attorney General, et al., Appellants, v. National Association for the Advancement of Colored People, et al.	On Appeal From the United States District Court for the Eastern District of Louisiana.

[May 22, 1961.]

Mr. Justice Douglas delivered the opinion of the Court.

One of the suits that is consolidated in this appeal was instituted in 1956 by the then Attorney General of Louisiana against appellee, the National Association for the Advancement of Colored People, in a Louisiana court and sought to enjoin it from doing business in the State. It was removed to the federal court.[1] Thereafter NAACP sued appellants in the federal court asking for a declaratory judgment that two laws of Louisiana were unconstitutional. A three-judge court was convened (28 U. S. C. § 2281) and the cases consolidated. After a hearing (on affidavits) and oral argument the court entered a *temporary* injunction that denied relief to appellants and enjoined them from enforcing the two laws in question. 181 F. Supp. 37. The case is here on appeal. 28 U. S. C. § 1253. We noted probable jurisdiction. 364 U. S. 869.

One of the two statutes of Louisiana in question prohibits any "non-trading" association from doing business

[1] See also *State* v. *N. A. A. C. P.*, 90 So. 2d 884.

in Louisiana if it is affiliated with any "foreign or out of state non-trading" association "any of the officers or members of the board of directors of which are members of Communist, Communist-front, or subversive organizations, as cited by the House of Congress [*sic*] Un-American Activities Committee or the United States Attorney."[2] Every nontrading association affiliated with an out-of-state association must file annually with Louisiana's Secretary of State an affidavit that "none of the officers" of the affiliate is "a member" of any such organization.[3] Penalties against the officers and members are provided for failure to file the affidavit and for false filings.

The NAACP is a New York corporation with some forty-eight directors, twenty vice-presidents, and ten chief executive officers. Only a few reside or work in Louisiana. The District Court commented that the statute "would require the impossible" of the Louisiana residents or workers. 181 F. Supp., at 40. We have received no serious reply to that criticism. Such a requirement in a law compounds the vices present in statutes struck down on account of vagueness. Cf. *Winters* v. *New York*, 333 U. S. 507. It is not consonant with due process to require a person to swear to a fact that he cannot be expected to know (cf. *Tot* v. *United States*, 319 U. S. 463), or alternatively to refrain from a wholly lawful activity.

The other statute[4] requires the principal officer of "each fraternal, patriotic, charitable, benevolent, literary, scientific, athletic, military, or social organization or organizations created for similar purposes" and operating in Louisiana to file with the Secretary of State annually

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[2] La. Rev. Stat., 1950, § 14:385 (1958 Supp.).

[3] La. Rev. Stat., 1950, § 14:386 (1958 Supp.).

[4] La. Rev. Stat., 1950, §§ 12:401–409.

"a full, complete and true list of the names and addresses of all of the members and officers" in the State. Members of organizations whose lists have not been filed are prohibited from holding or attending any meeting of the organization. Criminal penalties are attached both to officers and to members.

We are told that this law was passed in 1924 to curb the Ku Klux Klan, but that it was never enforced against any other organization until this litigation started; that when the State brought its suit some affiliates of NAACP in Louisiana filed membership lists, and that after those filings, members were subjected to economic reprisals. 181 F. Supp., at 39. The State denies that this law is presently being enforced only against NAACP; it also challenges the assertions that disclosure of membership in the NAACP results in reprisals. While hearings were held before the temporary injunction issued, the case is in a preliminary stage and we do not know what facts further hearings before the injunction becomes final may disclose. It is clear from our decisions that NAACP has standing to assert the constitutional rights of its members. *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, 459. We deal with a constitutional right, since freedom of association is included in the bundle of First Amendment rights made applicable to the States by the Due Process Clause of the Fourteenth Amendment. *Id.*, p. 460; *Bates* v. *Little Rock*, 361 U. S. 516, 523. And where it is shown, as it was in *N. A. A. C. P.* v. *Alabama*, *supra*, 462–463, that disclosure of membership lists results in reprisals against and hostility to the members, disclosure is not required. And see *Bates* v. *Little Rock*, *supra*, 523–524.

We are in an area where, as *Shelton* v. *Tucker*, 364 U. S. 479, emphasized, any regulation must be highly

selective in order to survive challenge under the First Amendment. As we there stated: ". . . even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Id.*, 488.

The most frequent expressions of that view have been made in cases dealing with local ordinances regulating the distribution of literature. Broad comprehensive regulations of those First Amendment rights have been repeatedly struck down (*Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296), though the power to regulate the time, manner, and place of distribution was never doubted. As stated in *Schneider* v. *State*, *supra*, 160–161, the municipal authorities have the right to "regulate the conduct of those using the streets," to provide traffic regulations, to prevent "throwing literature broadcast in the streets," and the like. Yet, while public safety, peace, comfort, or convenience can be safeguarded by regulating the time and manner of solicitation (*Cantwell* v. *Connecticut*, *supra*, 306–307), those regulations need to be "narrowly drawn to prevent the supposed evil." *Id.*, 307. And see *Talley* v. *California*, 362 U. S. 60, 64.

Our latest application of this principle was in *Shelton* v. *Tucker*, *supra*, where we held that, while a State has the undoubted right to inquire into the fitness and competency of its teachers, a detailed disclosure of every conceivable kind of associational tie a teacher has had probed into relationships that "could have no possible bearing upon the teacher's occupational competence or fitness." *Id.*, 488.

At one extreme is criminal conduct which cannot have shelter in the First Amendment. At the other extreme are regulatory measures which, no matter how sophisti-

cated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights. These lines mark the area in which the present controversy lies, as the District Court rightly observed.

Affirmed.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART concur in the result.

SUPREME COURT OF THE UNITED STATES

No. 294.—October Term, 1960.

Louisiana ex rel. Jack P. F. Gremillion, Attorney General, et al., Appellants, v. National Association for the Advancement of Colored People, et al.	On Appeal From the United States District Court for the Eastern District of Louisiana.

[May 22, 1961.]

Mr. Justice Frankfurter, whom Mr. Justice Clark joins, concurring.

One of the important considerations that led to the enactment of the Norris-LaGuardia Act, 47 Stat. 70, limiting the jurisdiction of the District Courts to grant injunctions in labor controversies, was that such injunctions were granted, usually by way of temporary relief, on the basis of affidavits. I am of the view that the issues that arise in controversies like the present one are likewise more securely adjudicated upon a foundation of oral testimony rather than affidavits. At all events, I am dubious about a fixed rule, such as that which is apparently in effect in the District Court for the Eastern District of Louisiana, barring oral testimony—subject to the usual safeguards of cross examination—in proceedings for a temporary injunction. I assume that oral testimony will be available in a proceeding to make the temporary injunction permanent.

In this understanding I concur in the judgment of the Court.